



Americans for Immigrant Justice

formerly Florida Immigrant Advocacy Center

December 15, 2017

VIA FIRST CLASS AND ELECTRONIC MAIL

U.S. Customs and Border Protection
Freedom of Information Act Office
Attn. FOIA Officer Sabrina Burroughs
1300 Pennsylvania Avenue, NW, Room 3.3D
Washington, D.C. 20229
CBPFOIA@cbp.dhs.gov

Privacy Office
Attn: FOIA Appeals
U.S. Department of Homeland Security
245 Murray Lane, SW, Mail Stop 0655
Washington, D.C. 20528-0655

Re: Freedom of Information Act (FOIA) Appeal - Request CBP-2017-033315

Dear FOIA Officer:

On January 16, 2017, Americans for Immigrant Justice (AI Justice) submitted a request for information under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, *et. seq.* (hereinafter the "Request") via electronic mail and First Class Mail. *See* Exhibit A. The Request pertained to disclosure of any and all records that were authored, prepared, received, collected and/or maintained by or transmitted to the U.S. Department of Homeland Security (DHS) and/or U.S. Customs and Border Protection (CBP) that describe, refer or relate to DHS and/or CBP's contractual or other relationship with all medical providers serving the following CBP stations: CBP Station Brownsville, CBP Station Corpus Christi, CBP Station Falfurrias, CBP Station Fort Brown, CBP Station Harlingen, CBP Station Kingsville, CBP Station McAllen, CBP Station Rio Grande City, CBP Station Weslaco (hereinafter collectively referred to as the "RGV Sector" or the "Rio Grande Valley Sector").

More than a month later, AI Justice received, via electronic mail, an acknowledgment notice from the CBP FOIA office on February 23, 2017, confirming receipt of the Request. *See* Exhibit B. Since that time, we have received no other correspondence or production from CBP. On April 26, 2017, AI Justice submitted a status update regarding the response to the request,

A non-profit organization dedicated to protecting and promoting the basic human rights of immigrants

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however, the CBP FOIA office failed to respond. *See* Exhibit C. Subsequent status inquiries have resulted in no updated information.

Please consider this letter an appeal of your constructive denial of the Request and a restatement of our request for a fee waiver.

When a party submits a FOIA request, the agency has 20 business days to determine whether to produce records responsive to the request. 5 U.S.C. § 552(a)(6)(A)(i). In unusual circumstances, this deadline may be extended for a maximum of ten additional business days. 5 U.S.C. § 552(a)(6)(B)(i). When an agency fails to meet the response times required by FOIA, requesting parties may deem the agency's delay a denial of the FOIA request and appeal the denial. *See, e.g., Ruotolo v. Dep't of Justice*, 53 F.3d 4, 8 (2d Cir. 1995) ("[A]dministrative remedies are 'deemed exhausted' if the agency fails to comply with the 'applicable time limit' provisions of the FOIA."); *Voinche v. Fed. Bureau of Investigation*, 999 F.2d 962, 963 (5th Cir. 1993) ("If an agency has not complied within the statutory time limits of a FOIA request, the requestor shall be deemed to have exhausted his administrative remedies and [may] bring suit."). You have failed to respond to our FOIA request within the twenty days provided under the FOIA statute.

FOIA incorporates a strong presumption in favor of mandatory disclosure of requested records. *Wisconsin Project on Nuclear Arms Control v. Dep't of Commerce*, 317 F.3d 275, 279 (D.C. Cir. 2003) ("FOIA accordingly mandates a 'strong presumption in favor of disclosure.'") (quoting *Dep't of Justice v. Ray*, 502 U.S. 164, 173 (1991)). Agencies may deny a FOIA request only when the requested records fall under any of the nine exemptions listed in FOIA. 5 U.S.C. § 552(b)(1)-(9). You have not responded to our FOIA request and thus have not applied any of the statutory exemptions to withhold the records we requested. Accordingly, we are entitled to the requested records.

In the event that we do not receive the required response and determination in the applicable time period, we will pursue appropriate legal action to enforce our rights under the FOIA.

Thank you in advance for your attention to this matter. Should you have any questions or concerns, please feel free to contact me at (305) 570-8925, or via email at jsantos@aijustice.org.

Sincerely,

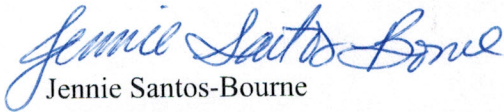

Jennie Santos-Bourne
Litigation Attorney

Exhibit A



Americans for Immigrant Justice

formerly Florida Immigrant Advocacy Center

January 16, 2017

VIA FIRST CLASS AND ELECTRONIC MAIL

U.S. Customs and Border Protection
Freedom of Information Act Office
Attn. FOIA Officer Sabrina Burroughs
1300 Pennsylvania Avenue, NW, Room 3.3D
Washington, D.C. 20229
CBPFOIA@cbp.dhs.gov

Re: Freedom of Information Act (FOIA) Request

Dear FOIA Officer Burroughs:

Americans for Immigrant Justice (AI Justice) submits this request for information under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, *et. seq.* (hereinafter the "Request").

REQUEST FOR INFORMATION

AI Justice requests disclosure of any and all records¹ that were authored, prepared, received, collected and/or maintained by or transmitted to the U.S. Department of Homeland Security (DHS) and/or U.S. Customs and Border Protection (CBP)² that describe, refer or relate to DHS and/or CBP's contractual or other relationship with all medical providers serving the following CBP stations: CBP Station Brownsville, CBP Station Corpus Christi, CBP Station Falfurrias, CBP Station Fort Brown, CBP Station Harlingen, CBP Station Kingsville, CBP Station McAllen, CBP Station Rio Grande City, CBP Station Weslaco (hereinafter collectively referred to as the "RGV Sector" or the "Rio Grande Valley Sector").

¹ The term "records" as used herein includes all records or communications preserved in electronic or written form, including but not limited to correspondence, directives, documents, data, videotapes, audiotapes, emails, faxes, files, guidance, standards, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, technical manuals, technical specifications, training materials or studies, including records kept in written form, or electronic format on computers and/or other electronic storage devices, electronic communications and/or videotapes, as well as any reproductions thereof that differ in any way from any other reproduction, such as copies containing marginal notations.

² The term "CBP" as used herein refers to CBP headquarters offices, including any divisions, subdivisions or sections therein, CBP field operations offices, including any divisions, subdivisions or sections therein; CBP offices at ports of entry, including any divisions, subdivisions or sections therein; and any other CBP organizational structures and offices.

Specifically, please produce those records, dated January 2012 through December 2016, describing, referring or relating to:

- (1) All memoranda, reports, correspondence, communications, or other documents reflecting, recording or stating any contract, agreement or understanding for the provision of medical services in place between DHS/CBP and any/each medical provider serving the individuals in DHS/CBP custody in the RGV Sector.
- (2) All memoranda, reports, correspondence, communications, or other documents reflecting, recording, stating or identifying any/each medical provider serving the individuals in DHS/CBP custody in the RGV Sector.
- (3) All memoranda, reports, correspondence, communications, or other documents reflecting, recording, stating or identifying the number of individuals in DHS/CBP custody transported from the RGV Sector to a medical provider.
- (4) All memoranda, reports, correspondence, communications, or other documents reflecting, recording, stating or identifying the number of individuals in DHS/CBP custody transported from the RGV Sector to a medical provider to be assessed for a medical travel clearance or to seek/obtain a medical travel clearance.
- (5) All memoranda, reports, correspondence, communications, or other documents reflecting, recording, stating or identifying the number of individuals in DHS/CBP custody transported from the RGV Sector to a medical provider and obtained a medical travel clearance without any restrictions.
- (6) All memoranda, reports, correspondence, communications, or other documents reflecting, recording, stating or identifying the number of individuals in DHS/CBP custody transported from the RGV Sector to a medical provider and obtained a medical travel clearance with a/some restriction(s).
- (7) All memoranda, reports, correspondence, communications, or other documents reflecting, recording, stating or identifying the amount of time (in hours/minutes) each individual in DHS/CBP custody transported from the RGV Sector to a medical provider to be assessed for a medical travel clearance or to seek/obtain a medical travel clearance spent with/at such provider.
- (8) All guidance, guidelines, directives, rules, policies, procedures, memoranda, reports, correspondence, communications or other documents that address DHS/CBP requests and/or needs for medical travel clearances for individuals in DHS/CBP custody being transported out of the RGV Sector.

REQUEST FOR WAIVER OF ALL COSTS

AI Justice respectfully requests that all fees associated with this FOIA request be waived. AI Justice is entitled to a waiver of all costs because disclosure of the information is “. . . likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 522(a)(4)(A)(iii). *See also* 6 C.F.R. § 5.11(k) (Records furnished without charge or at a reduced rate if the information is in the public interest, and disclosure is not in commercial interest of institution). In addition, AI Justice has the ability to widely disseminate the requested information. *See Judicial Watch v. Rossoti*, 326 F.3d 1309 (D.C. Cir. 2013) (finding a fee waiver appropriate when the requester explained, in detailed and non-conclusory terms, how and to whom it would disseminate the information it received).

i. Disclosure of the Information Is in the Public Interest

AI Justice aims to protect and promote the basic human rights of immigrants through a unique combination of free direct services, impact litigation, policy reform and public education at local, state, and national levels. Grounded in real-world, real-people experience, AI Justice's direct work with immigrant clients informs its broader policy work. Its multicultural and multilingual staff works to build alliances between immigrant and non-immigrant groups, including government, civic, social and faith-based communities. Advocates involved in immigration issues, the national media, and federal and state policy makers, consider AI Justice to be one of the most effective national groups fighting for immigrant justice.

With immigration reform on the horizon in Congress, immigration issues make up a major segment of the public discourse. Increasingly covered by U.S. media outlets, information regarding immigration matters is much more widely disseminated than ever before.³

Disclosure of the requested information will contribute significantly to public understanding of non-citizens' information about CBP facilities, detention conditions and access to medical care services afforded to individuals detained in the RGV Sector. The disclosed records will inform attorneys, advocates, members of the public and others concerned about detention conditions. AI Justice has the capacity and intent to disseminate widely the requested information to the public. To this end, AI Justice will post relevant information on the AI Justice website, draft analysis of the information and disseminate it to other immigration advocacy groups and potentially to members of Congress.

³ Eric Lipton and Julia Preston, *As U.S. Plugs Border in Arizona, Crossings Shift to South Texas*, N.Y. Times, June 16, 2013, available at <http://www.nytimes.com/2013/06/17/us/as-us-plugs-border-in-arizona-crossings-shift-to-south-texas.html?pagewanted=1&r=0>.

ii. Disclosure of the Information Is Not Primarily in the Commercial Interest of the Requester

AI Justice is a 501(c)(3), tax-exempt, not-for-profit, charitable legal services organization. AI Justice's work encompasses advocating for the basic human rights of immigrants through direct representation, policy reform, impact litigation, and public education. Therefore, AI Justice has no commercial interest that could be furthered by any FOIA request. Immigration attorneys, non-citizens and any other interested member of the public may obtain information about DHS and CBP policies and practices on AI Justice's frequently updated website. As stated above, AI Justice seeks the requested information for the purpose of disseminating it to members of the public who access AI Justice's website and not for the purpose of commercial gain.

Please inform me in advance if the charges for this FOIA production will exceed \$50.00.

Thank you in advance for your response to this request within twenty working days, pursuant to FOIA requirements. *See* 5 U.S.C. § 552(a)(6)(A)(i). Should you have any questions or concerns, please feel free to contact me at (305) 570-8925, or via email at jsantos@aijustice.org.

Sincerely,

Jennie Santos-Bourne
Litigation Attorney

Exhibit B

From: CBPFOIA@cbp.dhs.gov [mailto:CBPFOIA@cbp.dhs.gov]

Sent: Thursday, February 23, 2017 11:14 AM

To: Jennie Santos <jsantos@aijustice.org>

Subject: FOIA Request CBP-2017-033315 Submitted

This message is to confirm your request submission to the FOIAonline application: [View Request](#). Request information is as follows:

- Tracking Number: CBP-2017-033315
- Requester Name: Jennie Santos-Bourne
- Date Submitted: 02/23/2017
- Request Status: Submitted
- Description: See attachment

NOTICE: This electronic message transmission was sent by an attorney or at the direction of an attorney and contains information which may be confidential and/or privileged. The electronic message and any attachments are confidential property of the sender. The information contained herein is intended only for the use of the intended recipient(s). Interception, copying, accessing, disclosure, distribution, or use of this message or any attachments by any person other than an intended recipient is prohibited.

Exhibit C

From: Jennie Santos
Sent: Wednesday, April 26, 2017 4:01 PM
To: 'CBPFOIA@cbp.dhs.gov' <CBPFOIA@cbp.dhs.gov>
Subject: RE: FOIA Request CBP-2017-033315 Submitted

Greetings,

I am writing to request information regarding the status of my FOIA request. More than 60 days have passed without any production or other response. Please advise when I can expect production.

Regards,

Jennie Santos-Bourne

Litigation Attorney

Americans for Immigrant Justice

3000 Biscayne Blvd., Suite 400

Miami, FL 33137

Phone: (305) 570-8925 | Fax: (305) 576-6273

jsantos@aijustice.org

From: CBPFOIA@cbp.dhs.gov [mailto:CBPFOIA@cbp.dhs.gov]
Sent: Thursday, February 23, 2017 7:39 AM
To: Jennie Santos <jsantos@aijustice.org>
Subject: FOIA Request CBP-2017-033315 Submitted